

§ 766.53

(3) All FLP loans must be current or less than 90 days past due at the time the application for DSA is complete.

(4) The Agency has not accelerated or applied any special servicing action under this part to the loan since the natural disaster occurred.

(5) For any loan that will receive a DSA, the remaining term of the loan must equal or exceed 2 years from the due date of the installment set-aside.

(6) The loan must not have a DSA in place.

§ 766.53 Disaster Set-Aside amount limitations.

(a) The DSA amount is limited to the lesser of:

(1) The first or second scheduled annual installment on the FLP loans due after the disaster occurred; or

(2) The amount the borrower is unable to pay the Agency due to the disaster. Borrowers are required to pay any portion of an installment they are able to pay.

(b) The amount set aside will be the unpaid balance remaining on the installment at the time the DSA is complete. This amount will include the unpaid interest and any principal that would be credited to the account as if the installment were paid on the due date, taking into consideration any payments applied to principal and interest since the due date.

(c) Recoverable cost items may not be set aside.

§ 766.54 Borrower application requirements.

(a) *Requests for DSA.* (1) A borrower must submit a request for DSA in writing within eight months from the date the natural disaster was designated.

(2) All borrowers must sign the DSA request.

(b) *Required financial information.* (1) The borrower must submit actual production, income, and expense records for the production cycle in which the disaster occurred unless the Agency already has this information.

(2) The Agency may request other information needed to make an eligibility determination.

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§ 766.55 Eligibility determination.

Within 30 days of a complete DSA application, the Agency will determine if the borrower meets the eligibility requirements for DSA.

§ 766.56 Security requirements.

If, prior to executing the appropriate DSA Agency documents, the borrower is not current on all FLP loans, the borrower must execute and provide to the Agency a best lien obtainable on all of their assets except those listed under § 766.112(b).

§ 766.57 Borrower acceptance of Disaster Set-Aside.

The borrower must execute the appropriate Agency documents within 45 days after the borrower receives notification of Agency approval of DSA.

§ 766.58 Installment to be set aside.

(a) The Agency will set-aside the first installment due immediately after the disaster occurred.

(b) If the borrower has already paid the installment due immediately after the disaster occurred, the Agency will set-aside the next annual installment.

§ 766.59 Payments toward set-aside installments.

(a) *Interest accrual.* (1) Interest will accrue on any principal portion of the set-aside installment at the same rate charged on the balance of the loan.

(2) If the borrower's set-aside installment is for a loan with a limited resource rate and the Agency modifies that limited resource rate, the interest rate on the set-aside portion will be modified concurrently.

(b) *Due date.* The amount set-aside, including interest accrued on the principal portion of the set-aside, is due on or before the final due date of the loan.

(c) *Applying payments.* The Agency will apply borrower payments toward set-aside installments first to interest and then to principal.

§ 766.60 Canceling a Disaster Set-Aside.

The Agency will cancel a DSA if:

(a) The Agency takes any primary loan servicing action on the loan;

(b) The borrower pays the current market value buyout in accordance with § 766.113; or

(c) The borrower pays the set-aside installment.

§ 766.61 Reversal of a Disaster Set-Aside.

If the Agency determines that the borrower received an unauthorized DSA, the Agency will reverse the DSA after all appeals are concluded.

§§ 766.62–766.100 [Reserved]

Subpart C—Loan Servicing Programs

§ 766.101 Initial Agency notification to borrower of loan servicing programs.

(a) *Borrowers notified.* The Agency will provide servicing information under this section to borrowers who:

(1) Have a current farm operating plan that demonstrates the borrower is financially distressed;

(2) Are 90 days or more past due on loan payments, even if the borrower has submitted an application for loan servicing as a financially distressed borrower;

(3) Are in non-monetary default on any loan agreements;

(4) Have filed bankruptcy;

(5) Request this information;

(6) Request voluntary conveyance of security;

(7) Have only delinquent SA; or

(8) Are subject to any other collection action, except when such action is a result of failure to graduate. Borrowers who fail to graduate when required and are able to do so, will be accelerated without providing notification of loan servicing options.

(b) *Form of notification.* The Agency will notify borrowers of the availability of primary loan servicing programs, conservation contract, current market value buyout, debt settlement programs, and homestead protection as follows:

(1) A borrower who is financially distressed, or current and requesting servicing will be provided FSA-2512 (Appendix A to this subpart);

(2) A borrower who is 90 days past due will be sent FSA-2510 (Appendix B to this subpart);

(3) A borrower who is in non-monetary or both monetary and non-monetary default will receive FSA-2514 (Appendix C to this subpart);

(4) A borrower who has only delinquent SA will be notified of available loan servicing;

(5) Notification to a borrower who files bankruptcy will be provided in accordance with subpart G of this part.

(c) *Mailing.* Notices to delinquent borrowers or borrowers in non-monetary default will be sent by certified mail to the last known address of the borrower. If the certified mail is not accepted, the notice will be sent immediately by first class mail to the last known address. The appropriate response time will begin three days following the date of the first class mailing. For all other borrowers requesting the notices, the notices will be sent by regular mail or hand-delivered.

(d) *Borrower response timeframes.* To be considered for loan servicing, a borrower who is:

(1) Current or financially distressed may submit a complete application any time prior to becoming 90 days past due;

(2) Ninety (90) days past due must submit a complete application within 60 days from receipt of FSA-2510;

(3) In non-monetary default with or without monetary default must submit a complete application within 60 days from receipt of FSA-2514.

§ 766.102 Borrower application requirements.

(a) Except as provided in paragraph (e) of this section, an application for primary loan servicing, conservation contract, current market value buyout, homestead protection, or some combination of these options, must include the following to be considered complete:

(1) Completed acknowledgment form provided with the Agency notification and signed by all borrowers;

(2) Completed Agency application form;

(3) Financial records for the 3 most recent years, including income tax returns;